

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

FIRST MOTION IN LIMINE

Defendant Devin Sizemore, by and through his assigned counsel, and pursuant to Local Criminal Rule 12.1(E), moves this Court for an order precluding any and all evidence, arguments, or comments regarding the prior state case, *Oklahoma v. Sizemore*, Case No. CF-2016-593, in the District Court of Pittsburg County.

Although the government has not yet informed defense counsel which, if any, portions of the prior state case it may seek to introduce or refer to, Defendant files this motion early out of an abundance of caution to inform the Court that any reference to the prior state case may be an issue at the instant trial.

“It is well settled that ‘[t]he judgment of conviction pronounced by a court without jurisdiction is void.’” *United States v. Magnan*, 622

Fed.Appx. 719, 722 (10th Cir. 2015) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938)). As the Oklahoma Court of Criminal Appeals affirmed, following *McGirt*, the State of Oklahoma lacked jurisdiction to prosecute Mr. Sizemore for alleged acts underlying both the state and instant prosecutions. *See Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (2021). “[A] decision holding that a court lacked jurisdiction voids each and every action taken in the case.” *Magnan*, 622 Fed.Appx. at 723. Accordingly, this Court should preclude the government from making or eliciting any reference to the state proceeding and the since-vacated state conviction.

February 21, 2022

Respectfully submitted,

/s/

Lisa A. Peebles
Federal Public Defender
4 Clinton Square, 3rd Floor
Syracuse, NY 13202
(315) 701-0080
Lisa_Peebles@fd.org

Certificate of Electronic Filing and Service

This is to certify that on this 21st day of February, 2022, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Rebecca Dunnan, AUSA, and to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles
Federal Public Defender